

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

James Zarian,

Plaintiff,

v.

**Torres Home Appliances & More
Inc.,** a California Corporation; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff James Zarian complains of Defendants Torres Home Appliances & More Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from muscular dystrophy, cannot walk and uses a wheelchair for mobility.

2. Defendant Torres Home Appliances & More Inc. owned the Torres Home Appliances located at or about 3372 West Harvard St., Santa Ana, California, in January 2017.

1 3. Defendant Torres Home Appliances & More Inc. owns the Torres Home
2 Appliances (“Torres Appliances Repair”) located at or about 3372 West
3 Harvard St., Santa Ana, California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein,
9 including Does 1 through 10, inclusive, is responsible in some capacity for the
10 events herein alleged, or is a necessary party for obtaining appropriate relief.
11 Plaintiff will seek leave to amend when the true names, capacities,
12 connections, and responsibilities of the Defendants and Does 1 through 10,
13 inclusive, are ascertained.

14
15 **JURISDICTION & VENUE:**

16 5. This Court has subject matter jurisdiction over this action pursuant to
17 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 6. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California’s Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26
27 **FACTUAL ALLEGATIONS:**

28 8. Plaintiff went to Torres Appliances Repair in January 2017 to get his

1 washing machine and dryer repaired.

2 9. Torres Appliances Repair is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 10. Parking spaces are one of the facilities, privileges, and advantages
5 offered by Defendants to patrons of Torres Appliances Repair.

6 11. However, there were no parking spaces marked and reserved for
7 persons with disabilities during any of plaintiff's visit.

8 12. Currently, there is not a single parking space marked and reserved for
9 persons with disabilities.

10 13. Plaintiff personally encountered this barrier.

11 14. This inaccessible condition denied the plaintiff full and equal access and
12 caused him difficulty and frustration.

13 15. Paths of travel are one of the facilities, privileges and advantages offered
14 by Defendants to patrons of Torres Appliances Repair.

15 16. Even though the plaintiff did not personally confront the barrier, the
16 path of travel from the parking to the front entrance of Torres Appliances
17 Repair required a person to navigate a 3 inch step for which there was no ramp.

18 17. Currently, the path of travel from the parking to the front entrance of
19 Torres Appliances Repair requires a person to navigate a 3 inch step for which
20 there is no ramp.

21 18. Plaintiff would like to return and patronize Torres Appliances Repair but
22 will be deterred from visiting until the defendants cure the violations.

23 19. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 20. The violations identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 21. For example, there are numerous paint/stripe companies that will come
5 and stripe a parking stall and access aisle and install proper signage on rapid
6 notice, with very modest expense, sometimes as low as \$300 in fully
7 compliance with federal and state access standards.

8 22. Plaintiff is and has been deterred from returning and patronizing Torres
9 Appliances Repair because of his knowledge of the illegal barriers that exist.
10 Plaintiff will, nonetheless, return to assess ongoing compliance with the ADA
11 and will return to patronize Torres Appliances Repair as a customer once the
12 barriers are removed.

13 23. Given the obvious and blatant violation, the plaintiff alleges, on
14 information and belief, that there are other violations and barriers on the site
15 that relate to his disability. Plaintiff will amend the complaint, to provide
16 proper notice regarding the scope of this lawsuit, once he conducts a site
17 inspection. However, please be on notice that the plaintiff seeks to have all
18 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
19 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
20 he can sue to have all barriers that relate to his disability removed regardless of
21 whether he personally encountered them).

22 24. Additionally, on information and belief, the plaintiff alleges that the
23 failure to remove these barriers was intentional because: (1) these particular
24 barriers are intuitive and obvious; (2) the defendants exercised control and
25 dominion over the conditions at this location and, therefore, the lack of
26 accessible facilities was not an "accident" because had the defendants
27 intended any other configuration, they had the means and ability to make the
28 change.

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 2 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 3 defendants (42 U.S.C. section 12101, et seq.)

4 25. Plaintiff repleads and incorporates by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint.

7 26. Under the ADA, it is an act of discrimination to fail to ensure that the
 8 privileges, advantages, accommodations, facilities, goods and services of any
 9 place of public accommodation is offered on a full and equal basis by anyone
 10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 11 § 12182(a). Discrimination is defined, inter alia, as follows:

- 12 a. A failure to make reasonable modifications in policies, practices,
 13 or procedures, when such modifications are necessary to afford
 14 goods, services, facilities, privileges, advantages, or
 15 accommodations to individuals with disabilities, unless the
 16 accommodation would work a fundamental alteration of those
 17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18 b. A failure to remove architectural barriers where such removal is
 19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 20 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 21 Appendix "D."
- 22 c. A failure to make alterations in such a manner that, to the
 23 maximum extent feasible, the altered portions of the facility are
 24 readily accessible to and usable by individuals with disabilities,
 25 including individuals who use wheelchairs or to ensure that, to the
 26 maximum extent feasible, the path of travel to the altered area and
 27 the bathrooms, telephones, and drinking fountains serving the
 28 altered area, are readily accessible to and usable by individuals

1 with disabilities. 42 U.S.C. § 12183(a)(2).

2 27. Any business that provides parking spaces must provide a sufficient
3 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
4 Standards § 208. The required minimum number of handicap parking spaces
5 is dependent on the total number of parking spaces available. *Id.* According to
6 the 1991 Standards, if a parking lot has 1-25 spaces, it must have at least 1
7 accessible parking space. 1991 Standards § 4.1.2(5)(a). And 1 in every 8 of
8 those accessible parking spaces, but not less than 1, must be a “van” accessible
9 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §
10 4.1.2(5)(b). Under the 2010 Standards, a parking lot with 1-25 spaces must
11 have at least 1 accessible space and 1 of them must be van accessible. 2010
12 Standards § 208.2 & § 208.2.4.

13 28. Here, the failure to provide accessible parking spaces is a violation of the
14 ADA.

15 29. There must be an accessible path of travel that connects all buildings,
16 elements and spaces on the same site. 1991 Standards § 4.3.2. To be
17 considered an accessible route, there cannot be a stair or step. 1991 Standards
18 § 4.3.8. Any such change in level measuring greater than ½ inch must have a
19 ramp or lift. *Id.* 2010 Standards § 303.4.

20 30. Here, the unramped step is a violation of the ADA.

21 31. A public accommodation must maintain in operable working condition
22 those features of its facilities and equipment that are required to be readily
23 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24 32. Here, the failure to ensure that the accessible facilities were available
25 and ready to be used by the plaintiff is a violation of the law.

26 33. Given its location and options, plaintiff will continue to desire to
27 patronize Torres Appliances Repair but he has been and will continue to be
28 discriminated against due to the lack of accessible facilities and, therefore,

1 seeks injunctive relief to remove the barriers.

2
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
5 51-53)

6 34. Plaintiff repleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 35. Because the defendants violated the plaintiffs' rights under the ADA,
10 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
11 Code § 51(f), 52(a).)

12 36. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
13 discomfort or embarrassment for the plaintiffs, the defendants are also each
14 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
15 (c).)

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 Plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act which damages provide for
25 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3
4 Dated: March 2, 2017

CENTER FOR DISABILITY ACCESS

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6 By: 
7 Russell Handy, Esq.
8 Attorneys for plaintiff
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